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ECHOSTAR SATELLITE LLC AND
ECHOSTAR TECHNOLOGIES CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re ACACIA MEDIA TECHNOLOGIES CORPORATION	Case No. 05-CV-1114 JW **DECLARATION OF DAVID M. HYMAS IN SUPPORT OF SATELLITE DEFENDANTS' MEMORANDUM RE THE DEFINITIONS OF TERMS IN THE '863 AND '720 PATENTS** Date: Sept. 7-8, 2006 Time: 9:00 a.m. Courtroom: 8, 4th Floor Judge: Hon. James Ware

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I, DAVID M. HYMAS, declare and state:

1. I am an associate at Morrison & Foerster LLP, counsel of record for defendants EchoStar Satellite LLC and EchoStar Technologies Corporation in this case. Unless otherwise stated, I have personal knowledge of the matters stated below and, if called as a witness to testify could and would do so. I make this declaration in support of the Satellite Defendants' Memorandum Re. the Definitions of Terms in the '863 and '720 Patents.

2. Attached hereto as Exhibit A is a true and correct copy of this Court's *Markman* Order dated December 7, 2005, and filed in *Acacia Media Technologies Corp. v. New Destiny Internet Group, Inc., et al.,* No. 05-1114 (N.D. Cal.).

3. Attached hereto as Exhibit B is a true and correct copy of this Court's *Markman* Order dated July 12, 2004, and filed in *Acacia Media Technologies Corp. v. New Destiny Internet Group, Inc., et al.,* No. 02-1040 (C.D. Cal.).

4. Attached hereto as Exhibit C is a true and correct copy of *The American Heritage Dictionary of the English Language*, at 1026 (2000), regarding the definition of the word "local."

5. Attached hereto as Exhibit D is a true and correct copy of *Merriam-Webster Collegiate Dictionary*, at 683 (10th ed. 1998), regarding the definition of the word "local."

6. Attached hereto as Exhibit E is a true and correct copy of a web page from *Oxford English Dictionary Online* regarding the definition of the word "local," which is available at http://dictionary.oed.com/cgi/entry/50134719?query_type=word&queryword=local&first=1&max_to_show=10&sort_type=alpha&result_place=1&search_id=NX6C-ABIWrA-5374&hilite=50134719.

7. Attached hereto as Exhibit F is a true and correct copy of Harry Newton, *Newton's Telecom Dictionary*, at 446 (22nd ed. 2006), regarding cable head ends.

8. Attached hereto as Exhibit G is a true and correct copy of 4 Charles D. Ferris & Frank W. Lloyd, *Telecommunications Regulation: Cable, Broadcasting, Satellite, and the Internet*, app. e (1998), regarding cable head ends.

9. Attached hereto as Exhibit H is a true and correct copy of a web page from the Cable Modem Info Center regarding cable head ends, which is available at http://www.cabledigitalnews.com/cmic/headend.html.

10. Attached hereto as Exhibit I is a true and correct copy of a web page from Cable Digital News regarding cable head ends, which is available at http://www.cabledatacomnews.com/cmic/diagram.html.

11. Attached hereto as Exhibit J is a true and correct copy of a web page from Webopedia regarding cable head ends, which is available at http://www.webopedia.com/TERM/C/cable_headend.html.

12. Attached hereto as Exhibit K is a true and correct copy of a web page from Searchnetworking.com regarding cable head ends, which is available at http://searchnetworking.techtarget.com/sDefinition/0,,sid7_gci549164,00.html.

13. Attached hereto as Exhibit L is a true and correct copy of relevant excerpts from the transcript of the June 14, 2006, *Markman* hearing.

14. Attached hereto as Exhibit M is a true and correct copy of the applicants' April 10, 1996 Preliminary Amendment, which is part of the '720 patent's prosecution history.

15. Attached hereto as Exhibit N is a true and correct copy of the applicants' July 24, 1997, Office Action, which is part of the '720 patent's prosecution history.

16. Attached hereto as Exhibit O is a true and correct copy of the applicants' November 21, 1997, Response, which is part of the '720 patent's prosecution history.

17. Attached hereto as Exhibit P is a true and correct copy of *IEEE Standard Dictionary of Electrical and Electronics Terms*, at 911 (6th ed. 1996), regarding the definition of the word "represent."

18. Attached hereto as Exhibit Q is a true and correct copy of *Webster's Third New International Dictionary*, at 1926 (1986), regarding the definition of the word "represent."

19. Attached hereto as Exhibit R is a true and correct copy of *Webster's Third New International Dictionary*, at 2523-24 (1986), regarding the definition of the word "use."

20. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on August 11, 2006, in San Francisco, California.

David M. Hymas